

THE WHITE HOUSE

WASHINGTON

September 22, 1987

TO CIA OPS CTR VIA SIT RM LDX

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FOR:

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Deputy Director for
Congressional Affairs
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Attached is the background paper we will be using this morning in discussions on the continuing resolution with the House Rules Committee, Appropriations Committee, and Permanent Select Committee on Intelligence to attempt to achieve a waiver of Section 502 of the National Security Act.

An important part of the strategy for achieving a 502 waiver is the Agency's contacting HPSCI Chairman Stokes to ask him to advise HAC Chairman Whitten that HPSCI supports our request for the 502 waiver in the short-term continuing resolution.

The Rules Committee meets at 11:30 this morning to consider the rule for the continuing resolution. Any Hill contacts must be completed by 10:30 this morning to have any chance of success.


David S. Addington

Special Assistant to the President
for Legislative Affairs

September 22, 1987

AMENDMENT TO HOUSE JOINT RESOLUTION 362
(Union Calendar No. 189)
MAKING CONTINUING APPROPRIATIONS FOR FY 1988

AMENDMENT

Page 2, line 17, after "1987" insert ", notwithstanding section 502(a)(1) of the National Security Act of 1947".

EXPLANATION OF AMENDMENT

The amendment waives Section 502 of the National Security Act to permit obligation and expenditure of funds appropriated under the short-term continuing resolution for U.S. intelligence activities, despite the absence of an intelligence authorization act for FY 1988. The Congress will not complete action on the Intelligence Authorization Act for Fiscal Year 1988 (H.R. 2112), which currently is in House-Senate conference committee, prior to October 1, 1987, the date on which the continuing appropriations resolution will take effect.

Existing statutes establish an explicit, binding requirement for a statutory authorization of appropriations as a precondition for the obligation or the expenditure of appropriated funds for (1) foreign aid (section 10 of P.L. 91-672), (2) State Department activities (Section 15 of the State Department Basic Authorities Act), and (3) intelligence activities (Section 502 of the National Security Act of 1947).

The short-term continuing resolution as reported from committee waives the statutory requirements for authorization legislation for foreign aid and for State Department activities, but not for intelligence activities.

Section 502 of the National Security Act requires that funds for an intelligence activity be "specifically authorized by the Congress," a defined term that explicitly requires statutory authorization of appropriations for that activity, in contrast to the analogous provision concerning certain defense activities (10 U.S.C. §114(a)), which requires only that funds be "specifically authorized by law," an undefined term that lends itself to waiver or satisfaction by implication from the continuing resolution, unlike Section 502.

The amendment is a technical amendment which simply permits the obligation and expenditure of appropriations made available by the continuing resolution to continue U.S. intelligence activities.

SECTION 10 OF PUBLIC LAW 91-672
(Requirement of Authorization for Foreign Aid)

Sec. 10. (a) Notwithstanding any provision of law enacted before the date of enactment of this section, no money appropriated for foreign assistance (including foreign military sales) shall be available for obligation or expenditure—

(1) unless the appropriation thereof has been previously authorized by law; or

(2) in excess of an amount previously prescribed by law.

(b) To the extent that legislation enacted after the making of an appropriation for foreign assistance (including foreign military sales) authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

(c) The provisions of this section shall not be superseded except by a provision of law enacted after the date of enactment of this section.

SECTION 15(a) OF THE STATE DEPARTMENT BASIC AUTHORITIES ACT
(Requirement for Authorization for State Department Activities)

Sec. 15. (a)(1) Notwithstanding any provision of law enacted before the date of enactment of the State Department/USIA Authorization Act, Fiscal Year 1975, no money appropriated to the Department of State under any law shall be available for obligation or expenditure with respect to any fiscal year commencing on or after July 1, 1972—

(A) unless the appropriation thereof has been authorized by law enacted on or after February 7, 1972; or

(B) in excess of an amount prescribed by law enacted on or after such date.

(2) To the extent that legislation enacted after the making of an appropriation to the Department of State authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

(3) The provisions of this section—

(A) shall not be superseded except by a provision of law enacted after February 7, 1972, which specifically repeals, modifies, or supersedes the provisions of this section; and

(B) shall not apply to, or affect in any manner, permanent appropriations, trust funds, and other similar accounts administered by the Department as authorized by law.

SECTION 502(a) (1) OF THE NATIONAL SECURITY ACT OF 1947
(Requirement of Authorization for Intelligence Activities)

Sec. 502. [50 U.S.C. 414] (a) Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if—

(1) those funds were specifically authorized by the Congress for use for such activities; or

(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 501 of this Act concerning any significant anticipated intelligence activity, the Director of Central Intelligence has notified the appropriate congressional committees of the intent to make such funds available for such activity; or
(3) in the case of funds specifically authorized by the Congress for a different activity—

(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

(B) the need for funds for such activity is based on unforeseen requirements; and

(C) the Director of Central Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

(b) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

(c) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the term "appropriate congressional committees" means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and

(3) the term "specifically authorized by the Congress" means that—

(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.

SECTION 114 OF TITLE 10, UNITED STATES CODE

§ 114. Annual authorization of appropriations

(a) No funds may be appropriated for any fiscal year to or for the use of any armed force or obligated or expended for—

- (1) procurement of aircraft, missiles, or naval vessels;
- (2) any research, development, test, or evaluation, or procurement or production related thereto;
- (3) procurement of tracked combat vehicles;
- (4) procurement of other weapons;
- (5) procurement of naval torpedoes and related support equipment;
- (6) military construction;
- (7) the operation and maintenance of any armed force or of the activities and agencies of the Department of Defense (other than the military departments);
- (8) procurement of ammunition; or
- (9) other procurement by any armed force or by the activities and agencies of the Department of Defense (other than the military departments);

unless funds therefor have been specifically authorized by law.

(b) In subsection (a)(6), the term "military construction" includes any construction, development, conversion, or extension of any kind which is carried out with respect to any military facility or installation (including any Government-owned or Government-leased industrial facility used for the production of defense articles and any facility to which section 2353 of this title applies), any activity to which section 2807 of this title applies, any activity to which chapter 133 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23. Such term does not include any activity to which section 2821 or 2854 of this title applies.

(c) The size of the Special Defense Acquisition Fund established pursuant to chapter 5 of the Arms Export Control Act (22 U.S.C. 2795 et seq.) may not exceed \$1,070,000,000.

(d) Funds may be appropriated for the armed forces for use as an emergency fund for research, development, test, and evaluation, or related procurement or production, only if the appropriation of the funds is authorized by law after June 30, 1968.

(e) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of equipment for the reserve components of the armed forces (including the National Guard) shall be set forth separately from other amounts requested for procurement for the armed forces.